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'Three strikes' must be reformed statewide

By Steve Cooley -- Special To The Bee

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In 1994, California voters overwhelmingly approved Proposition 184, the "three-strikes" law, which mandated a sentence of 25 years to life imprisonment for anyone convicted of any felony if that person had been previously convicted of two or more serious or violent felonies. The three-strikes law also doubled the penalty for anyone convicted of a felony who had been previously convicted of one serious or violent felony (a so-called second-strike case). Thousands of recidivists have been imprisoned under the second-and third-strike statutory schemes. Some observers credit the declining crime rates in most counties to this recidivist sentencing law.

At first, many prosecutors and judges felt that three-strikes sentences were mandatory in all qualifying cases, no matter what the nature of the triggering felony. In California, many crimes are punishable as felonies but are not labeled as serious or violent by the Penal Code. For example, a second shoplifting offense, stealing more than \$100 worth of avocados, writing an NSF check for more than \$200 and possessing a small amount of illegal drugs for personal use are all felonies that could trigger the 25 years to life sentencing consequence of the three-strikes law.

In 1996, the California Supreme Court ruled that judges retained discretion under the three-strikes law to disregard a prior strike in the interest of justice and impose a sentence more commensurate with the circumstances of the present offense. As a result of this decision, policies and practices changed in some counties and courts, but not in all. Thus, California has a system that can vary widely and result in inequality of treatment depending on the county in which the offense is committed and on which court within a county sentences the offender. Such inequality causes the public to question whether the criminal justice system is actually dispensing evenhanded justice.

In 1999, as a candidate for Los Angeles County district attorney, I issued a campaign position paper in which I pledged to issue a new three-strikes policy for the Los Angeles County District Attorney's Office. Immediately after being sworn in as district attorney, I made good on that pledge.

The present policy of the Los Angeles County District Attorney's Office requires that if a potential third strike is not a serious or violent felony, it will not be treated as a third-strike case except in very unusual circumstances. It is generally sentenced as a second-strike case. This policy avoids injustice and abuse in the form of disproportionately harsh sentences of 25 years to life for relatively minor crimes. Since December 2000, prosecutors have implemented this policy and virtually eliminated 25-years-to-life sentences for petty thieves and petty drug offenders. This new three-strikes policy has worked well and has been well received by law enforcement, the courts and the community at large.

In 2004, voters were asked to approve Proposition 66, a ballot measure that virtually all law enforcement officials believed would have seriously undercut the three-strikes law. It would have resulted in the wholesale release of thousands upon thousands of dangerous criminals. Pre-election opinion polls indicated broad public support for Proposition 66. Only a last-minute aggressive public awareness campaign led by Gov. Schwarzenegger and other former California governors defeated the proposition by a close vote of 53 percent to 47 percent. Schwarzenegger has said that he would be interested in fixing problems with the current three-strikes law. Those who supported Proposition 66 have vowed to continue their efforts to modify or repeal the three-strikes law. There is little doubt that the public wants reasonable and just reform of the three-strikes law.

Experience has revealed some inequities in the original law. The best way to ensure that the three-strikes law retains public support and confidence is to make modifications that will dispense justice while preserving the valuable public safety features of the law.

The Three Strikes Reform Act of 2006 is the joint product of prosecutors, private attorneys and other interested parties working together to ensure a realistic approach to prevent unjust sentencing without compromising the ability to remove serious and dangerous recidivist criminals from our communities. It has already received support from law enforcement, including Los Angeles County Sheriff Lee Baca, Los Angeles Police Chief William Bratton and the Los Angeles County Chiefs of Police Association. It has also been favorably reviewed by a number of newspapers, including The Sacramento Bee, the Los Angeles Times, the San Francisco Chronicle, the San Diego Union Tribune, the San Gabriel Valley Tribune and the Orange County Register. California State Senator Gloria Romero has agreed to introduce legislation to place the initiative on the ballot.

The proposed act keeps the present two and three strikes penalties; keeps the definitions of "serious" and "violent" felonies that count as prior strikes; and provides that current strikes must be either serious or violent felonies or from specific crime categories, such as certain sex offenses, large quantity drug offenses, crimes where the defendant uses a firearm, was armed or intended to cause great bodily injury to another person. Current third-strike prisoners whose triggering felony would not qualify for a 25-years-to-life sentence under the act would be eligible to apply for resentencing at the court's discretion as a second strike offender.

The criminal justice system needs to retain the very beneficial provisions of the three-strikes law. However, the state should not allow the misallocation of limited penal resources by having life prison sentences for those who do not pose a serious criminal threat to society. The punishment should fit the crime. California can assure public safety and achieve the interests of justice in all counties and courts with The Three Strikes Reform Act of 2006.

About the writer:

- Steve Cooley has been district attorney of Los Angeles County since December 2000. Information about the Three Strikes Reform Act of 2006 can be found at lacountyda.org.